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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No.

PAUL K. STEWART, *Petitioner*

v.

PETER N. KYROS, WILLIAM S. COHEN, and CARL ALBERT, *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Petitioner, Pro Se

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The Petitioner Paul K. Stewart respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered in this proceeding on June 6, 1974.

OPINIONS BELOW

The opinion of the Court of Appeals (unpublished) appears in the Appendix hereto. The opinion rendered by the District Court for the District of Maine, Southern Division, likewise unpublished appears also in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the First Circuit was entered on June 6, 1974. An application for an extension of time in which to file a petition for a writ of certiorari in the

above-entitled case was presented to Mr. Justice Brennan, who on August 29, 1974 signed an order extending the time to and including November 3, 1974.

This Court's jurisdiction is invoked under the United States Constitution, Article III, Sections 1 and 2; 28 U.S.C. Section 1331(a); 42 U.S.C. Section 1984; 28 U.S.C. Section 2201; 42 U.S.C. Sections 1971(b), 1973 i, 1981, 1983, 1985, 1986 and 1988. Further under the United States Constitution; The Preamble; Article I, Sec. 10, Par. 1; Article I, Sec. 9, Subsec. 3; Fifth Amendment; Ninth Amendment; Twelfth Amendment; Fourteenth Amendment.

The Court's jurisdiction is further invoked under the decision in the case of Powell v. McCormack at p. 512 of 23 L ed 2d 491, said case of Powell v. McCormack being favorably cited in Nixon v. United States, Tapes Decision, Roman II , usticiability, New York Times July 25, 1974, p. 20; and the jurisdiction to determine that petitioner's 1972 vote within the State of Maine for Nixon as President, which vote was part of the prevailing State and National vote should be considered to determine whether that vote has been diluted, negated, frustrated and finally voided by Congressional actions toward Impeachment, is solidly supported by Baker V. Carr's upholding of plaintiffs therein as asserting "a plain, direct and adequate interest in maintaining the effectiveness of their votes", Baker v. Carr, 7 L ed 2d 663 at p. 680. See also plaintiffs' briefs in Baker v. Carr, and Powell v McCormack.

This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1254 (1).

QUESTIONS PRESENTED

1. Whether the Impeachment Procedures of Congress are subject to judicial review?

2. Whether desuetude, vagueness, and dangerously anachronistic characteristics in appropriateness in an age of swift nuclear potential action can render a part of the Constitution obsolete?

3. Whether standards of interpretation of "high crimes and misdemeanors" in Congressional action against the former

President were in error?

4. Whether the rules of procedure adopted by the House of Representatives and the Senate were in compliance with the Constitution, and whether the actual procedures of those bodies and their members complied with the Constitution?

5. Whether this petitioner has standing to challenge the Procedures of Impeachment?

6. Whether this Court should by its powers of Declaratory Judgment restore the former President to his position of President of the United States?

CONSTITUTIONAL PROVISIONS INVOLVED

Article II, Section 4, so far as it applies to President of the United States: "The President – shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

Article I, Sec. 2, Cl. 5: The House of Representatives -- shall have the sole Power of Impeachment."

Article I, Sec. 3, Cl. 6: "The Senate shall have Power to try all Impeachments." --"When the President of the United States is tried, the Chief Justice shall preside."

Article III, Sec. 2, Cl. 2: "The judicial Power shall extend to all Cases, in Law and Equity arising under this Constitution."

Article I, Sec. 10, Par. 1, "Contracts"; Article I, Sec. 9, Subsec. 3, "Attainder and ex post facto Law"; Fifth, Ninth, Twelfth, and Fourteenth Amendments; and the Preamble.

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved, mainly relating to the Civil Rights Act, and Declaratory Judgment, are set forth in the Appendix hereto.

STATEMENT OF THE CASE

The case of the petitioner is succinctly stated by Memorandum and Order of the Court of Appeals of the First Circuit which stated:

"Plaintiff's complaint seeks equitable and declaratory relief in enjoining the present impeachment proceedings concerning the President and in declaring the Impeachment Articles obsolete. The plaintiff claims that his own vote is in danger of being nullified and his personal and property rights threatened by the possibility of removal of an experienced president prior to the expiration of a full four year term. His challenge to the Articles is directed to the vagueness of definition, non-use, and inconsistency with Constitutional amendments and court decisions, making the procedure inappropriate in the present age."

The petitioner's complaint was dismissed by the District Court and the dismissal affirmed by the First Circuit Court of Appeals on June 6, 1974, giving as reasons, lack of jurisdiction of the Court and lack of standing of the petitioner. Petitioner seeks certiorari for a determination by this Court that the Federal Courts have jurisdiction to review this matter, and that petitioner has standing to challenge the Impeachment Procedures of Congress, and by the means of Declaratory Judgment in any event to define the nature of an impeachable offense as empowered by its authority to determine "all Cases, in Law and Equity, arising under this Constitution," and where the Court by its Declaratory Judgment indicates that no impeachable offense has been committed, to adjudge the entitlement of the resigned President to a return to his office.

Since the Circuit Court of Appeals Memorandum and Order of June 6, 1974, events have transpired which have vindicated the need for Court determination of just what offenses alleged against a President justify removal. Former President Nixon's view that alleged actions of the President were not impeachable offenses was asserted by his counsel and such alleged acts were vigorously declared impeachable by members of Congress, and in a domination of events which customarily follows the role of the accuser, the greatest President in our Nation's history was

unjustly harried from office to the great loss of the American people and the reversal of an overwhelming mandate of the electorate in 1972, in which the vote of the petitioner was a part, and gives him standing to challenge the overthrow of a duly elected President by the excessive acts of a tyrranous Congress, based on hysteria and an erroneous conception of "high crimes and misdemeanors".

To restore the good name of our former President, and to prevent a recurrence of such an arrogant abuse of power, petitioner invokes this Court to avail itself of the assertion of jurisdiction in impeachments in one of the last major opinions of the late Earl Warren, former Chief Justice of the Supreme Court, stated in Powell v. McCormack at p. 512 of 23 L ed 2d 491. The alleged impeachable offenses might be shown to be the necessary protection of the stability of the government by the Commander - in - Chief in time of war which cannot be considered out of context of the times in which language was spoken or action taken.

The view of petitioner seeking declaratory relief that would construe the Impeachment Procedures as obsolete in a nuclear age was vindicated by the advice given by Secretary of State Kissinger that an Impeachment Debate of two months or more would create a power vacuum which would endanger the world. This estimate of events that motivated the former President to yield to the imperious demands of Congress was verified by President Ford before the Judiciary Committee on October 17, 1974.

Petitioner's complaint viewed the massive amount of millions spent by the Congress probing into the innermost counsels of the President and his advisors, and searching with a fine tooth comb every action and thought of his life in their attempt to "investigate the President" as an harassment in violation of 42 U.S.C. Section 1985, and petitioner's attempt to prevent these massive procedures against a President as a duty imposed upon him by 42 U.S.C. Section 1986, to seek to prevent a conspiracy by force, intimidation or threat to prevent a United States official from holding his office. Petitioner in his prayer for other relief as is just and

proper seeks equitable relief through the United States Supreme Court to declare that the former President was illegally hounded from office and to seek a Restoration of former President Richard M. Nixon to his office of President of the United States with all the emoluments and perquisites of said office to be restored as required by the vote of the People of the United States in 1972.

REASONS FOR GRANTING THE WRIT

1. THE FIRST TIME IN OUR HISTORY THAT AN IMPEACHMENT PROCEEDING HAS RESULTED IN A PRESIDENT LEAVING OFFICE, MERITS REVIEW BY THIS COURT AS TO THE LEGITIMACY AND FAIRNESS OF IMPEACHMENT PROCEDURES.

A substantial and growing number of authorities view the language of this Court in Powell v. McCormack at p. 512, of 23 L ed 2d 491, as a charter to review Congressional activities involving Impeachment. That decision made it clear that "sole Power of Impeachment" in the House of Representatives (Article 1, Sec. 2, Cl. 5) and "sole Power to try all Impeachments" in the Senate (Article I, Sec. 3, Cl. 6) constituted a division of labor between the two Houses concerning authority to originate, and authority to try Impeachments. It does not exclude the authority of the Federal Courts which "shall extend to all Cases, in Law and Equity, arising under this Constitution" including Impeachment (Article III, Section 2).

This view is upheld for varying reasons by Daniel A. Rezneck, American Bar Association Journal, June 1974; Robert E. Sullivan, Dean of University of Montana Law School, brief requested by Senator Mansfield, Congressional Record, p. S16725 (1974); Matthew Nimetz, New York Times, March 27, 1974 (Editorial page); Raoul Berger, "Impeachment", Ch. III; Irving Brant, "Impeachment", pp. 182-197; former Justice Goldberg, Portland (Me.) Express, March 1, 1974, p. 1; and Smith Hempstone, columnist, Portland (Me.) Press Herald, February 25, 1974.

Fairness to the former President and the 25% or 40,000,000

Americans who believed the former President was unfairly treated in Impeachment Procedures of the Congress justify the grant of certiorari to review the judgment below concerning. Congressional Impeachment legitimacy and powers.

2. DESUETUDE, VAGUENESS, AND DANGEROUSLY ANACHRONISTIC CHARACTERISTICS OF IMPEACHMENT IN AN AGE OF SWIFT NUCLEAR POTENTIAL ACTION HAVE RENDERED THE IMPEACHMENT ARTICLES OBSOLETE.

Secretary of State Kissinger is reliably reported to have advised the former President that a dangerous power vacuum in world affairs would have been created by a two to four month trial of the Impeachment. This is intolerable in a nuclear age, and motivated resignation rather than risk to the world as the former President's course.

Impeachment is vague in its "high Crimes and Misdemeanors" terminology as evidenced by the widely varying standards of interpretation offered for Congressional consideration by the legal staff of the House Judiciary Committee, the Justice Department, and the attorneys for the former President.

Desuetude of Impeachment action is evidenced by Impeachment's never having been seriously pursued against an elected President, and only once before (more than a century ago) used seriously against any President.

Because of its anachronistic characteristics, and anomalous features, and medieval obscurity, Impeachment of Presidents has not been used and thus escaped the judicial scrutiny that would have brought this device into line with the Due Process Clause, the Equal Protection Clause of the Fifth Amendment, and with the Fourteenth Amendment, and the Sovereignty of the People Clause of the Ninth Amendment, and the relationship of Impeachment to the Twelfth Amendment with its radically different Election Procedures from the time when Impeachment was written into the Constitution -- and for this necessary judicial scrutiny, petitioner seeks certiorari so this Court may prevent the annulling of the People's vote for President in 1972.

3. THIS COURT SHOULD REVIEW THE STANDARDS OF INTERPRETATION OF "HIGH CRIMES AND MISDEMEANORS" WHICH CONGRESS USED TO JUSTIFY ITS UNWARRANTED ACTION AGAINST THE FORMER PRESIDENT.

The former President was brought to resignation of his office by an erroneous conception of the term "high crimes and misdemeanors". Trivial actions, some of them resulting from the former President's conception of his duty to defend this Country in war time by protecting the good name of its government, have been exaggerated into great crimes of state. Art Buchwald in a syndicated article focussed attention on the view of persons outside America as to the frivolous character of the charges on which Congress and the media have brought down a duly elected government of the United States.

Even to this date (October 23, 1974), the multimillion dollar investigation by Congress and the Special Prosecutor with its revelations of tapes of the most secret conversations, has failed to contradict successfully the conclusion expressed by the President on August 5, 1974, "that the record, in its entirety, does not justify the extreme step of impeachment and removal of a President". This judgment and Congress' unfortunate conclusions should be reviewed by this Court, to remove a stigma from the record of our former President and the history of this Country.

Wartime priority to consideration of the Nation's safety, "the death of soldiers--our negotiations--the freeing of United States prisoners (of war)" (New York Times Co. v. United States 29 L ed 2d 822 at 852 and 849. See also priority of national security considerations in Ivanov v. United States, No. 73-1648, Congressional Record S19215-1974) must be balanced against the timing of Executive enforcement activities recently termed the "cover-up of a cover-up". Hamilton Fish recently (August 5, 1974) stated that Nixon's management of his duties has potentially saved 100 million American lives through detente with China and Russia.

The interpretation of "high crimes and misdemeanors" must take coloration from not only the assassination-marked

progress of English rulers to their thrones, but in contemporary definition from the 20 million deaths charged to Stalin, uncounted millions due to Hitler, the hundreds or thousands sent "to the wall" by Castro. Contrast this with the Nobelworthy achievements for peace by Nixon, and it is clear that Congress is the tyrant, not our former President. Schlesinger's "The Imperial Presidency", despite an anti-Nixon bias, documents that Nixon's handling of Presidential powers differs little in kind from previous Presidents. Taking care that Lawrence O'Brien, an elected party official, pays his taxes differs little from Congress' actions in seeing that Nixon or Rockefeller pay their taxes.

Charging our former President with "high Crimes and Misdemeanors" for a "Cover-up of a cover-up" is like charging with breaking and entering a person who enters your house and saves your child from fire. This Court should review by certiorari the double-standard applied by Congress to our former President. (See Charles Luchman's address, "America, the Beautiful", Congressional Record, S16761-1974)

4. THE RULES OF PROCEDURE RELATING TO IMPEACHMENT ADOPTED BY THE HOUSE OF REPRESENTATIVES AND THE SENATE AND THE ACTIONS OF MEMBERS PURSUANT TO IMPEACHMENT SHOULD BE REVIEWED BY THIS COURT FOR THEIR COMPLIANCE WITH THE CONSTITUTION.

The history of Impeachment Procedures in the House has been marred by selective leaks of confidential materials, some of the violations by members of Congress, some witnesses questioned in secret, Star Session type inquisitions; some witnesses whose cross-examination might have damaged the Congressional theory of Presidential involvement being conducted in secret, and the presentation of Presidential counsel being in secret while the summaries of the case for and against President were presented by members of Congress on public television, gave lip-service only to the public's right to know and seemed calculated to present the former President's case in

the most damaging light. Many of these abuses are collected in an address by Charles Luckman at page S16761 of the September 17, 1974 Congressional Record.

Likewise as to the Senate which adopted the March 2, 1868 Senate Rules for the conduct of an Impeachment, the majority leader indicating that the same interpretation of Rule IV would be given as to the "Chief Justice of the Supreme Court of the United States shall preside" that was given in 1868 in which the intention was expressed that the Chief Justice could be over-ruled by a vote of the Senate, rather than a presiding by the Chief Justice similar to the function of a Judge in a Court of Law. The Chief Justice in 1868 was repeatedly over-ridden on the admissibility of evidence.

This Court should review these procedures now responding to this petition for certiorari, rather than delaying this review to an occasion when the passion for Impeachment may distort perspective.

Irving Brant in "Impeachment, Trials and Errors" (1972) finds that when Congress sets the standards, and then proceeds to find facts to conform to its own unreviewed notion of "high Crimes and Misdemeanors", its actions are repugnant to the Constitutionally condemned ban on ex post facto laws and bills of attainder. (Article I, Sec. 9, Subsec. 3)

5. THIS PETITIONER HAS STANDING TO CHALLENGE THE PROCEDURES OF IMPEACHMENT.

The Petitioner based his complaint on the very same Civil Rights Act considered in Baker v. Carr, but more particularly the petitioner was concerned with those parts of the Act concerning voting for the President, and the same contentions that petitioner's vote is diluted (7 L ed 2d 663 at 703) by Impeachment Procedures as Tennesseeans' votes were diluted by the complained-of practices in that case, and the finding of standing in Baker v. Carr that Plaintiffs therein were entitled to, because they were asserting "a plain, direct and adequate interest in maintaining the effectiveness of their votes" (7 L ed 2d 663 at p. 680); and petitioner likewise seeks the decision of this Court because the action of Congress tends to

reverse and nullify the petitioner's vote for the former President's electors in 1972 by their action toward Impeachment.

Mr. Justice Black in Bell v. Hood, 327 U.S. 678, expressly referred to the practice of the Supreme Court to sustain the jurisdiction of Federal Courts to issue injunctions to protect rights safeguarded by the Constitution especially on questions of voting rights. The petitioner here believes that this Court will wish to grant certiorari to determine the effect upon the Impeachment articles that the Ninth Amendment, reserving Power to the People; the Twelfth Amendment, regarding choice of a President; the impairment of the Contract for a four year term, and the Contracts Clause of Article 1, Sec. 10, Par. 1; the endangerment to petitioner's life, liberty and property (in conflict with due process in the Fifth Amendment) in the termination of the services of an experienced President brilliantly performing for World Peace; and the Fourteenth Amendment. Petitioner requests this Court to find standing also in the requirement under 42 U.S.C. Section 1986 for anyone having knowledge of the harassment of a Federal Official as described in 42 U.S.C. Section 1985, to prevent same.

Petitioner also has standing under 42 U.S.C. Section 1988 which bids the Courts to give special consideration to suits in vindication of Civil Rights and 42 U.S.C. Section 1984 which prefers such rights in reviewability by the Supreme Court.

It seems that where what amounts to the overthrow of a tradition of long standing that Presidents be given the opportunity to serve out their full term, the citizen who voted for the President sought to be impeached might very well challenge, and have standing to do so, such a procedure at variance with the existing tradition. The petitioner prays this Court to grant certiorari that he may more comprehensively present his case for standing to defend a President wrongfully harassed by Impeachment Procedures.

6. THIS COURT SHOULD BY THE POWERS OF DECLARATORY JUDGMENT RESTORE THE FORMER PRESIDENT TO HIS POSITION OF DULY ELECTED PRESIDENT OF THE UNITED STATES.

Petitioner's writ of certiorari should be granted so that this Court's decision may result in a Declaratory Judgment of entitlement of the former President to his office, as it did in the case of Powell v McCormack, 395 U.S. 486, at 550; 23 L Ed 2d 491 at 553, 89 S. Ct. 1944. Since the President's resignation was brought about through the illegal harassment of a Federal official by acts condemned in 42 U.S.C., Section 1985, this Court by using the powers of 42 U.S.C. Section 1986 should take action in behalf of the person injured to restore him to his rightful position, as the petitioner as requested in his Complaint seeking the Court to "grant such other relief as is just and proper, through its equitable and declaratory powers".

CONCLUSION

For these reasons, and because of the paramount public interest in resolving the Law of Impeachment, because the two occasions of its serious use against Presidents have been periods of public and Congressional hysteria, requiring a determination by this Court textually committed to construing the Constitution, in what will be a calmer period, because a former President has in the absence of this certiorari and this Court's decision been unfairly condemned by an erroneous conception of the meaning of "high Crimes and Misdemeanors" to an obloquy undeserved by his great contribution to his Country, a writ of certiorari should issue to review the judgment and opinion of the First Circuit.

Respectfully submitted,

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APPENDIX

STATUTES CITED IN ACTION INCLUDING COMPLAINT, BRIEF AND MOTIONS RELATED TO APPEAL

UNITED STATES CODE

28 U.S.C. Section 2201. Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and also legal relations of any interested party seeking such declaration whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

42 U.S.C. Section 1971. Voting rights

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

42 U.S.C. Section 1973 i. Prohibited acts - Failure or refusal to permit casting or tabulation of vote

(a) No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this subchapter or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

Intimidation, threats, or coercion

(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 1973a(a), 1973d, 1973f, 1973g, 1973h, or 1973j(e) of this title.

False information in registering or voting; penalties

(c) Whoever knowingly or willfully gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be fined not more than $10,000 or imprisoned not more than five years, or both: Provided, however, that this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, Member of the United States Senate, Member of the United States House of Representatives, or Delegates or Commissioners from the territories or possessions, or Resident Commissioner of the Commonwealth of Puerto Rico.

42 U.S.C. Section 1981. Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. Section 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. Section 1984. Same; review of proceedings

All cases arising under the provisions of this Act in the courts of the United States shall be reviewable by the Supreme Court of the United States, without regard to the sum in controversy, under the same provisions and regulations as are provided by law for the review of other causes in said court.

42 U.S.C. Section 1985. Conspiracy to interfere with civil rights - Preventing officer from performing duties

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful dis-

charge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

Obstructing justice; intimidating party, witness, or juror

(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce the right of any person, or class of persons, to the equal protection of the laws;

42 U.S.C. Section 1986. Same; action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect,

the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

42 U.S.C. Section 1988. Proceedings in vindication of civil rights

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficent in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

28 U.S.C. Section 1331. Federal question; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions, wherein the matter in controversy exceeds the sum of value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any

setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition may impose costs on the plaintiff. June 25, 1948, c, 646, 62 Stat. 930, July 25, 1958, Pub. L. 85-554, Sec. 72 Stat. 415.

UNITED STATES DISTRICT COURT

District of Maine

Southern Division

PAUL K. STEWART, *Plaintiff*	)	
v.	)	CIVIL NO. 14-115
PETER N. KYROS, ET ALS., *Defendants*	)	

ORDER DISMISSING ACTION

Plaintiff, Paul K. Stewart, who, at the time of the filing of this action, was a United States citizen residing in the State of Maine, prays in his complaint that this Court, under 42 U.S.C. Sections 1981, 1983, 1985(1), 1986, permanently enjoin defendants, Peter N. Kyros and William S. Cohen, members of the United States House of Representatives from Maine, and Carl Albert, Speaker of the House of Representatives, and their agents from any activity relating to the impeachment of the President of the United States and that this Court declare that the impeachment clause of the United States Constitution, Article II, Section 4, insofar as it applies to the President of the United States, is obsolete. Defendants have moved for dismissal of the action on the grounds that plaintiff lacks standing to bring the suit, the complaint does not present a justicable case or controversy and that this Court has no jurisdiction to entertain the action.

Hearing having been had this date upon said motions to dismiss; and plaintiff having appeared pro se; and defendants having appeared by their counsel, Peter Mills, Esq., United States Attorney, and Errol K. Paine, Esq., Bangor; and the Court having considered the written and oral arguments of counsel, it is,

ORDERED that defendant's motion to dismiss are GRANTED and the action as to all defendants is DISMISSED for failure of the complaint to state a claim over which this Court has jurisdiction. Const. Art. III, Sec. 2, cl. 1; 28 U.S.C. Sec. 1331(a). See Gilligan v. Morgan, 413 U.S. 1 (1973) (and cases therein cited); Laird v. Tatum, 408 U.S. 1 (1972) (and cases therein cited). See also O'Shea v. Littleton, 42 U.S.L.W. 4139 (U.S. January 15, 1974); Linda R.S. v. Richard D., 410 U.S. 614 (1973); cf. National Prohibition Cases, 253 U.S. 350 (1920).

Dated at Portland, Maine, this 8th day of February 1974.

/s/ Edward T. Gignoux
United States District Judge

A true copy
Attest:
Morris Cox, Clerk

By /s/ E. Sax
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 74-1089

PAUL K. STEWART, ETC.,
Plaintiff, Appellant,

v.

PETER N. KYROS ET AL.,
Defendants, Appellees,

Before COFFIN, Chief Judge,
McENTEE and CAMPBELL, Circuit Judges.

MEMORANDUM and ORDER

Entered June 6, 1974

Plaintiff's complaint seeks equitable and declaratory relief in enjoining the present impeachment proceedings concerning the President and in declaring the Impeachment Articles obsolete. The plaintiff claims that his own vote is in danger of being nullified and his personal and property rights threatened by the possibility of removal of an experienced president, prior to the expiration of a full four year term. His challenge to the Articles is directed to the vagueness of definition, non-use, and inconsistency with Constitutional amendments and court decisions, making the procedure inappropriate in the present age.

While both the district court, which dismissed the complaint, and this court have given full opportunity for briefs and argument, the issue attempted to be posed the complaint is honeycombed with such a multiplicity of potholes in the path of adjudication that lengthy discussion would serve no

purpose. while the prerequisites to standing have been liberalized over the years, we know of no case which goes so far as to allow an individual who is indistinguishable in his interest from a large majority of those voting for President in 1972 to bring suit when there exists one individual who is above all others directly affected. And, whether or not a situation might be imagined where judicial review of a judgment of impeachment should be exercised, this complaint seeks to halt and declare unconstitutional the present investigation of one committee of the House of Representatives in advance of any conclusion of that committee, of an impeachment, and of a judgment of conviction. Equitable considerations underlying abstention and legal considerations underlying ripeness are all too obvious. Finally, the political question aspect of justiciability, whatever may be its threshold, clearly proscribes any court intrusion into what is at the moment a committee inquiry.

The order of the district court is affirmed.

By the Court:

/s/ Dana H. Gallup
Clerk

(cc: Messrs. Mills, Paine and Mr. Stewart)

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-516

PAUL K. STEWART, PETITIONER

v.

PETER N. KYROS, WILLIAM S. COHEN, AND CARL ALBERT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioner brought this action in the United States District Court for the District of Maine to enjoin Peter N. Kyros and William S. Cohen, members of the United States House of Representatives, and Carl Albert, Speaker of the House of Representatives, from taking any action with regard to the impeachment of former President Richard M. Nixon. He also sought declaratory relief, claiming that the constitutional definition of an impeachable offense is impermissibly vague and that the impeachment articles of the United States Constitution are obsolete. The district court dismissed the complaint (Pet. App., pp. 18-19) and the court of appeals affirmed (Pet. App. pp. 20-21).

The court of appeals correctly refused adjudication of the merits of petitioner's claim for reasons of standing, abstention, ripeness, and the political question aspect of justiciability. Moreover, since the entry of the judgment of the court of appeals on June 6, 1974, former President Nixon has resigned the presidency and the impeachment proceedings petitioner seeks to enjoin have been terminated.[1] Accordingly, petitioner's action is now moot.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1974.

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[1]Petitioner now requests that former President Nixon be reinstated as President. There is of course no constitutional basis for reinstatement of a former President who has voluntarily resigned from office, but this issue cannot in any event be presented to this Court, as petitioner apparently seeks to do, essentially in the form of a newly amended complaint. See, *e.g.*, *Lawn* v. *United States*, 355 U.S. 339.

DOJ-1974-12